

# REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES TO PROVIDE

## DIRECT DEPOSIT OF PAYROLL AND PENSION

ISSUED BY THE OFFICE OF THE STATE TREASURER

CONTRACT NUMBER: TREAS-1603-DIRDEP

### I. Overview

The Office of the State Treasurer (“OST”) seeks a qualified vendor (“Vendor”) to provide Direct Deposit banking services for both the State of Delaware’s active payroll and pension payments.

This Request for Proposal (“RFP”) is issued pursuant to 29 *Del. C.* §§ 6981, 6982 and 6986.

Timetable: The tentative timetable for this RFP process is as follows:

EVENT	DATE
RFP published	February 11, 2016
Deadline for vendor questions	February 18 (4:00 p.m. EST)
Deadline for State responses – Q&A closed	February 26 (4:00 p.m. EST)
Deadline for vendor proposal submission	March 8 (4:00 p.m. EST)
Finalist presentations	March 25
Estimated Award notification	March 31
Implementation	July 1

Proposal to Remain Open: Vendor must agree to keep any proposal to this RFP open for six months after the deadline for vendor proposal submission.

Contract Term: This RFP process will result in a contract for a three-year term, to begin July 1, 2016 and end June 30, 2019. The contract will provide OST with the option to extend the contract for up to two additional one-year periods, bringing the potential contract end date to June 30, 2022.

Respondent Eligibility: Any Vendor that does not meet the following criteria will not qualify for this RFP process:

- Vendor must have a minimum of five years’ experience providing Direct Deposit banking services to at least one major government entity, which includes any state government, any county or municipality with an annual operating budget greater than \$2 billion, and any federal agency with an annual operating budget greater than \$5 billion.
- Vendor must have total assets greater than \$10 billion on December 31, 2015.

*Note: This requirement pertains to the cash management bank, not the holding company.*

- Vendor must have long term debt credit rating of “A-” or better.

- Vendor must be a member of the National Automated Clearing House Association, and be able to receive and transmit ACH transfers.

Pre-Bid Meeting: There is no pre-bid meeting scheduled at this time.

Designated Contact: This RFP process will be managed by OST's Manager of Banking Services ("Designated Contact"):

James M. DiDonato  
Telephone: 302-672-6710  
Email: james.didonato@state.de.us

## **II. Background**

There are three separate agencies involved with the administration of the State's Direct Deposit program:

- OST coordinates the implementation of new contracts and banking services, helps resolve service issues with the Vendor, and approves and pays invoices issued by the Vendor. Each pay cycle, OST funds the Vendor so that it may initiate the Direct Deposit ACH credits to state employees and/or pensioners. In addition, OST reconciles funding transactions with the Vendor.

*Key numbers: Each year OST initiates about 38 funding repetitive wire transfers to the Vendor (26 for PHRST and 12 for Pensions).*

- Payroll and Human Resources Statewide Technology ("PHRST") is part of the State of Delaware's, Office of Management and Budget ("OMB"). PHRST works with individual State agencies to maintain the payroll database, and creates bi-weekly payment files that are sent to the Vendor. PHRST aggregates payroll information that is sent by the individual State agencies, which have the ultimate responsibility for the accuracy of each active state employee's record.

*Key numbers: Currently, about 43,000 employees receive Direct Deposit of payroll each pay cycle.*

- Office of Pensions ("Pensions") is also a division of OMB. Pensions maintains the payment database of all retired state employees who receive pensions. Unlike the active employee payroll, Pension payments are made monthly at the end of the month – except for December, when the payment is made before December 25 – for a total of 12 each year.

*Key numbers: Currently, about 28,000 pensioners receive Direct Deposits of pension payments each month.*

### **III. Scope of Services**

The accurate and timely transmission of Direct Deposit payments is of the utmost importance to the State of Delaware. A good working relationship between the State of Delaware and the Vendor allows current and retired employees to have confidence in the State's pay system. Ensuring against any delay or disruption of payment to employees and pensioners is a significant responsibility. Vendor must be able to respond immediately and aggressively when any Direct Deposit transmission is, for any reason, in jeopardy.

Detailed requirements for the services requested pursuant to this RFP are set out in Appendix A of this RFP.

### **IV. Requirements and Evaluation Criteria**

#### **A. Required Information**

1. Vendor shall provide the following information with its proposal in the order listed below. Failure to respond to any request for information within this RFP may result in rejection of the proposal at the sole discretion of OST. The proposal will be presented in a 3-ring binder, with each completed attachment identified in its own tab.

Tab A: Transmittal Letter. This letter must address these topics:

- A summary of the Vendor's Direct Deposit banking services experience, and interest in providing these services to the State of Delaware.
- A summary of material exception(s) to the RFP requirements as detailed by the Vendor on Attachment 5, including justifications for same.
- A statement that no bank account maintenance or ACH origination related to this RFP will take place outside of the United States.

Tab B: Attachment 1: Questionnaire

Tab C: Attachment 2: Pro Forma Bid Sheet

Tab D: Attachment 3: Confidential Information Form

Tab E: Attachment 4: Business References

Tab F: Attachment 5: Exception Form

Tab G: Attachment 6: Non-Collusion Statement

Tab H: Attachment 7: Employing Delawareans Report

Tab I: Requested Audited and Unaudited Financial Statements

2. Prior to the execution of an award document, the successful Vendor shall furnish OST with proof of (i) valid State of Delaware business license, (ii) certification(s) necessary to perform services as identified in the Scope of Services set out in Appendix A, and (iii) proof of and amount of insurance no

less than as identified in Section 10 of the formal agreement attached hereto as Appendix B.

## **B. Evaluation Criteria**

An Evaluation Team, comprised of representatives from OST and other state agencies, will make quantitative and qualitative evaluations of all proposals. The Evaluation Team will consider Vendors based on their responsiveness, competence, professionalism, financial strength and organizational fit using the criteria set out below. The team's findings and recommendations will be presented to and evaluated by the Cash Management Policy Board ("Board") for final approval of a Vendor by that body.

### **1. Criteria Weight**

All proposals shall be evaluated using the same criteria and scoring weights set out below:

<b>Ability</b> to meet all current technical and cash management requirements as described in <u>Appendix B: Scope of Services</u> . <ul style="list-style-type: none"><li>■ File transfer processes</li><li>■ Reporting and notifications</li><li>■ ACH processing; funding of Direct Deposit accounts</li></ul>	50%
<b>Quality:</b> reputation for reliability and method of service; industry position, including commitment to future excellence. <ul style="list-style-type: none"><li>■ Experience of operation and management teams</li><li>■ Industry reputation and growth</li><li>■ Ratings, rankings and/or references</li></ul>	30%
<b>Pricing</b> , as reflected on the pro forma bid sheet. <ul style="list-style-type: none"><li>■ Total annual fee based on current processing requirements and stated volumes</li><li>■ Ancillary and/or optional services recommended by the Vendor</li><li>■ Cost-saving measures recommended by the Vendor</li></ul>	20%

### **2. Proposal Clarification**

The Evaluation Team may communicate with a Vendor in order to clarify uncertainties or gain better understanding of a proposal. Vendors may not modify proposals as a result of such communication, and they must provide requested information in a timely manner.

### **3. References**

The Evaluation Team may communicate with all references provided by a Vendor, and may use information gained thereby in the evaluation process. In addition, the Evaluation Team may communicate with any known client of a Vendor outside of the reference list, and any information gained may be used in the evaluation process.

#### **4. Oral Presentations**

The Evaluation Team may invite selected Vendors to make in-person oral presentations to the Evaluation Team. *Any costs associated with oral presentations will be borne by the Vendor.*

#### **5. On-site Visits**

The Evaluation Team may make site visits to key Vendor processing and/or administrative facilities as part of the evaluation process. *Any costs associated with site visits will be borne by the State.*

### **V. RFP Issuance and Submission of Proposals**

#### **A. RFP Issuance**

##### **1. Public Notice**

Public notice of this RFP has been provided in accordance with 29 Del. C. §6981.

##### **2. Publication of this RFP**

This RFP is published in electronic form only. It is available at the following websites:

<http://bids.delaware.gov/>  
<http://treasurer.delaware.gov/rfps.shtml>  
<http://nast.net>

##### **3. Assistance to Vendors with a Disability**

Vendors with a disability may receive reasonable accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than fourteen days prior to the deadline for receipt of proposals.

##### **4. RFP Designated Contact**

All communication about this RFP shall be made via email to the Designated Contact at the following address:

james.didonato@state.de.us

Vendors should rely only on written statements issued by the Designated Contact.

***The Vendor must designate a single point of contact, who will be responsible for coordinating all internal Vendor communication. The Designated Contact will only communicate with that one person for each Vendor.***

**5. Contact with Consultants and Legal Counsel**

The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the Vendors' responses. Vendors shall not contact the State's consultant or legal counsel on any matter related to the RFP unless so instructed in writing by the Designated Contact.

**6. Contact with Other State Employees**

Direct contact with State of Delaware employees other than the Designated Contact regarding this RFP is expressly prohibited without prior written consent of the Designated Contact. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State that require contact in the normal course of doing that business.

**7. Organizations Ineligible to Bid**

Any individual, business, organization, corporation, consortium, partnership, joint venture or other entity currently debarred, suspended or otherwise ineligible to conduct business in the State of Delaware for any reason is not eligible to respond to this RFP.

**8. Exclusions**

The Evaluation Team reserves the right to refuse to consider any proposal from a Vendor that:

- a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or in the performance of the contract;
- b. Has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty;
- c. Has been convicted or has had a civil judgment entered for a violation under state or federal antitrust statutes;
- d. Has violated contract provisions as a state contractor such as:
  - 1. Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - 2. Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e. Has violated ethical standards set out in law or regulation; or
- f. Has violated any other regulation of the State of Delaware determined to be serious and compelling as to affect responsibility as a state contractor.

#### **9. No Press Releases or Public Disclosure**

OST reserves the right to pre-approve any news or broadcast advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of OST.

Notwithstanding the foregoing, the State of Delaware will not prohibit or otherwise prevent the awarded Vendor(s) from direct marketing to the State of Delaware's agencies, departments, municipalities, and/or any other political subdivisions; provided that, no Vendor shall use the State's seal or imply preference for the solution or goods provided.

#### **10. RFP Not an Offer**

This RFP does not constitute an offer by OST or the State of Delaware.

#### **11. Right to Cancel RFP**

OST reserves the right to cancel this RFP at any time during the procurement process, for any reason or for no reason. OST makes no commitments, expressed or implied, that this process will result in a business transaction with any Vendor.

#### **12. Revisions to the RFP**

If it becomes necessary to revise any part of the RFP, an addendum will be posted with the original RFP at:

<http://bids.delaware.gov/>  
<http://treasurer.delaware.gov/rfps.shtml>  
<http://nast.net>

### **B. Submission of Proposals**

#### **1. Acknowledgement of Understanding of Terms**

By submitting a proposal, a Vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and attachments hereto, and has fully informed itself as to all existing conditions and limitations, including, without limitation, any minimum requirements herein.

A Vendor must describe in detail on Attachment 5 any areas where it will be unable to provide services as requested. In addition, if a Vendor is willing to provide the services exactly as requested, but believes that there would be benefits (such as cost savings or improved service) to making adjustments to the services outlined, the Vendor should describe the adjustments and the benefits on Attachment 5. Acceptance or rejection of any or all such exceptions is within the sole discretion of OST.

Upon receipt of Vendor proposals, each Vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve a Vendor from any obligation with respect to this RFP.

Vendors must respond to all mandatory requirements presented in this RFP. The words “shall”, “will” and/or “must” are used herein to designate a mandatory requirement. Failure to respond to a mandatory requirement may, at OST’s discretion, cause the disqualification of a Vendor’s proposal.

## **2. Proposal Deliveries**

The Vendor will submit six paper copies and six electronic copies on CD, DVD or USB drive. One of the six hard copy proposals will be clearly labeled as the “master” copy.

***The deadline for submissions is 4:00 p.m. EST on March 8, 2016.*** The proposal package delivery address is:

Office of the State Treasurer  
Attention: Direct Deposit Proposal  
820 Silver Lake Boulevard, Suite 100  
Dover, DE 19904

The proposing Vendor bears the risk of delays in delivery.

## **3. Proposal Modifications**

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original proposal and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

## **4. Proposal Costs and Expenses**

The State of Delaware

will not pay any costs incurred by any Vendor associated with any aspect of responding to this RFP, including proposal preparation, printing or delivery, presentation, system demonstrations or negotiation process.

## **5. Proposal Expiration Date**

Prices quoted in the proposal to this RFP shall remain fixed and binding on the Vendor for no less than six months from the proposal submission deadline. The State of Delaware reserves the right to ask for an extension of time if needed.

## **6. Late Proposals**



Proposals received after the specified date and time will not be accepted or considered. Late proposals will be destroyed or returned to Vendor at Vendor's request and at Vendor's cost. To document compliance with the deadline, each proposal will be date and time stamped upon receipt.

**7. Proposal Opening**

The Designated Contact will open proposal packages in the presence of Treasury witnesses, and will establish a list of all Vendors submitting proposals. There will be no public opening of proposals.

**8. Non-Conforming Proposals**

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP is non-conforming shall reside solely with OST.

**9. Concise Proposals**

OST discourages overly lengthy and costly proposals and prefers that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. OST's interest is in the quality and responsiveness of the proposal.

**10. Realistic Proposals**

Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable. OST expects that Vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. The State of Delaware shall bear no responsibility for a Vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

**11. Confidentiality of Documents**

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of a Vendor's proposal will be treated as confidential during the evaluation process. As such, proposals will not be available for review by anyone other than OST, the Evaluation Team or their designated agents. There shall be no disclosure of any of Vendor's information to a competing Vendor prior to award of the contract unless such disclosure is required by law or by order of a court of competent jurisdiction.

The State of Delaware and its constituent agencies, including OST, are required to comply with the State of Delaware Freedom of Information Act, [29 Del. C. § 10001, et seq. \("FOIA"\)](#). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. Once a proposal is received by the State of Delaware and a decision on a contract award is made, the content of selected

and non-selected Vendor proposals will likely become subject to FOIA's public disclosure obligations.

The State of Delaware wishes to create a business-friendly environment and procurement process. As such, the State respects that Vendors desire to protect intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). If a Vendor feels that it cannot submit a proposal without including confidential business information, it must adhere to the following procedure or such proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the Vendor's confidential business information may be lost.

In order to allow the State to assess its ability to protect confidential business information, Vendors will be permitted to designate appropriate portions of their proposal as confidential business information.

Vendors may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled "Confidential Business Information" and include the specific RFP number. The envelope must contain a letter from the submitting Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002, and briefly stating the reasons that each document meets such definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed. A Vendor's allegation as to its confidential business information shall not be binding on the State. The State shall independently determine the validity of any Vendor designation as set forth in this section. Any Vendor submitting a proposal or using the procedures discussed herein expressly accepts the State's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendors assume the risk that confidential business information included within a proposal may enter the public domain.

## **12. Discrepancies and Omissions**

Vendor is fully responsible for the completeness and accuracy of its proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of Vendor. Should Vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, Vendor shall notify the Designated Contact, in writing, of such findings at least fourteen (14) days before the deadline for receipt of proposals. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of Vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the RFP, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, at least fourteen (14) calendar days prior to the deadline for receipt of proposals.

### **13.RFP Question and Answer Process**

Treasury will allow written (email) requests for clarification of the RFP, ending on the date provided in the table on Page 1. Questions and answers will be compiled into a comprehensive document with Vendor names removed, which will be placed on the same websites as the original RFP. Questions about the RFP must refer to the specific page, section, paragraph and/or text. The Vendor will submit questions solely to the Designated Contact.

### **14.State's Right to Reject Proposals**

Treasury reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in Treasury's specifications or Vendor's response), to sit and act as sole judge of the merit and qualifications of each proposal offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as OST may deem necessary or otherwise in the best interest of the State of Delaware.

### **15.Receipt of Proposal Not a Contract**

Vendor's submission of a proposal in connection with this RFP may result in OST selecting Vendor to engage in further discussions and negotiations toward execution of a binding contract. Neither the award of this RFP nor the commencement of such negotiations, constitutes a commitment by OST to execute a contract or to consummate negotiations.

### **16.Notification of Withdrawal of Proposal**

Vendor may withdraw its proposal by written request, provided that both proposal and request are received by OST prior to the proposal due date. Proposals must be re-submitted prior to the proposal due date in order to be considered further.

### **17.Proposal Constitutes an Offer**

All proposals received are considered firm offers if not withdrawn in writing prior to the proposal submission deadline.

### **18.Award of RFP**

The Board has the statutory authority to award all banking services contracts. At its sole discretion, the Board may decide to award this contract to other than the lowest priced proposal, to award multiple contracts, or not award a contract.

### **19.Binding Agreement**

Notice in writing to a Vendor of the acceptance of its proposal by OST and the subsequent full execution of a written contract pursuant to the terms below will

constitute a binding agreement. No Vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

## **VI. Contract Process**

### **1. Formal Contract**

Vendor(s) receiving an award of this RFP will be expected to enter into a formal contract with OST in the form attached hereto as Appendix B, as modified by the additional contract terms set out in sub-section 2 below. Vendors must note any material objections to the formal contract attached as Appendix B on the schedule of exceptions attached hereto as Attachment 5. A Vendor's subsequent negotiation of the terms of the standard contract not noted on Attachment 5 may result in cancellation of the award of the RFP to such Vendor.

### **2. Modification of Contract Terms**

OST reserves the right to modify the terms and conditions of the standard contract attached hereto as Appendix B, subject to negotiation with Vendor in accordance with the exceptions taken and recorded on Attachment 5. Any modifications to the standard contract shall be determined by OST in its sole discretion, and OST may terminate such negotiations at any time for any reason, or for no reason.

### **3. Supplemental Terms**

The formal contract may be supplemented with ancillary agreements specifically identified by the Vendor and agreed to by OST. The terms and conditions of any such agreements are subject to negotiation with the Vendor during the time frame set out below.

### **4. Time Frame**

The successful Vendor shall promptly execute a contract as set out above within twenty (20) business days after award of the RFP. If no final contract has been executed by such date, OST reserves the right to cancel the award of this RFP to such Vendor and make a new award of the RFP to another Vendor.

### **5. Provision of Services**

No Vendor is to begin any service prior to the execution of a formal contract by OST and the Vendor.

### **6. Cancellation of RFP Award**

If the Vendor to whom the award is made fails to enter into a final contract as herein provided, the award will be annulled, and an award may be made to another Vendor.

### **7. Collusion or Fraud**

Any evidence of agreement or collusion among Vendors acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the proposals of such Vendors void.

By responding to this RFP, the Vendor shall be deemed to have represented and warranted that: (i) its proposal is not made in connection with any competing Vendor submitting a separate response to this RFP; (ii) its approval is in all respects fair and without collusion or fraud; (iii) the Vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and (iv) no employee or official of OST participated directly or indirectly in the Vendor's proposal preparation.

#### **8. Lobbying and Gratuities**

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of OST concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected Vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, OST shall have the right to annul any contract resulting from this RFP without liability or, at OST's sole discretion, deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

#### **9. Solicitation of State Employees**

During the RFP process, Vendors shall not, directly or indirectly, solicit any employee of OST to leave OST's employ in order to accept employment with the Vendor, its affiliates, actual or prospective contractors, or any person acting in concert with Vendor, without prior written approval of OST. Solicitation of OST employees during the RFP process by a Vendor may result in rejection of the Vendor's proposal.

### **VII. Attachments and Appendices**

- |              |                                 |
|--------------|---------------------------------|
| Attachment 1 | Questionnaire                   |
| Attachment 2 | Pro Forma Bid Sheet             |
| Attachment 3 | Confidential Information Form   |
| Attachment 4 | Business References             |
| Attachment 5 | Exception Form                  |
| Attachment 6 | Non-Collusion Statement         |
| Attachment 7 | Employing Delawareans Report    |
| - Appendix A | Scope of Services               |
| - Appendix B | Professional Services Agreement |
| - Appendix C | File Parameters                 |

## **Attachment 1: Questionnaire**

CONTRACT NUMBER: TREAS-1603-DIRDEP

### **Experience**

1. Generally describe the background of your firm. Include a brief history, functional organizational chart and ownership structure. Provide a more in-depth discussion of your firm's experience with Direct Deposit services, including how that function fits in with your firm's operations. Do you consider it a core banking service?
2. Describe the ACH origination component of your overall banking structure, especially the Direct Deposit function. Include number of employees.
3. Provide any market share analyses from internal or external sources that illustrate your relative competitive position to your competitors for the requested services.
4. List and describe any significant contributions your firm has made in provision of the requested services that differentiates you from your competitors.
5. Describe and/or provide your firm's core values, governing principles, and mission statement. How do these traits and/or goals relate to your firm's provision of the requested services? Why do they make your firm a "good fit" for this engagement?
6. Describe in detail the composition and experience of those individuals who would be assigned to provision of this service for the State. For each individual, include a complete resume with both work and academic experience. Highlight the individual's experience with public sector clients. What level of access will OST have with respect to each of the persons identified?
7. Describe any SEC or other material litigation, action or sanctions against your firm, its subsidiaries, or contracted third party processors that is presently pending or that was resolved (favorably or unfavorably) in the prior five years, as it relates to this RFP.
8. Provide the last two years of audited financial statements for your firm plus the most recent statements for unaudited periods (Tab I).
9. For what types of governments – municipality, county, state, federal – do you provide Direct Deposit services? Please briefly describe the number and scope of your Direct Deposit clients.
10. What is the greatest number of records you've received from your current largest client for any single payment period? In terms of volume, where would the State of Delaware's Direct Deposit of payroll program fall in your ranking of clients? Direct Deposit of pension? Combined?
11. What would the effect be of the State of Delaware's Direct Deposit program on your overall capacity? How would you handle situations where several large clients transmitted their Direct Deposit payments on the same day? How would you mitigate the risk that your system would be overburdened?

**Subcontractors**

1. Will you use a subcontractor to provide this service to the State? If yes, what is its name and how long have you had this relationship? If no, please proceed to the next section.
2. Please explain your relationship to the subcontractor? Independent third party? Subsidiary? Other?
3. For what government entities does the subcontractor currently provide Direct Deposit services? Please include length of time.
4. Please describe the experience of the subcontractor's management team.

**Disaster Recovery / Continuity of Operations Plan**

1. Describe your contingency plans for equipment, power disruptions or other failures that could affect Direct Deposit services or information reporting. Please include detail on the following topics:
  - Location of alternate work sites
  - Personnel who would move to alternate work sites
  - Frequency that "hot site" testing is conducted
  - Redundant equipment and/or procedures that are in place in the event of equipment failure
  - Routine data backup procedures
2. How often is your Disaster Recovery Plan reviewed? Tested?

**Data Storage**

1. Please describe how you archive your files, including what options the State of Delaware may have and costs associated with those options.
2. How long is data archived and available for retrieval? Is retrieval available via your online reporting service or must a special request be made via Customer Service?

**Reporting**

1. How do you report return items and notifications of change?
2. What statements are available online? Daily? Monthly? In your response, please include what download formats, such as PDF, MS Excel, CSV and BAI, you support.
3. For both "standard" and "extended" storage, how many days of access would the State have for these online reports?
  - Notifications of Change
  - Daily statements
  - Monthly statements

**Customer Service**

1. Please briefly describe the dedicated customer service team that will be assigned to the State of Delaware relationship for day-to-day issues. Please include the city (or cities) where your respective teams (operations, customer service, and management) are based.

2. What is your expected time for resolving standard customer service requests? Special, non-routine requests?

### **Transition**

1. What is your expected time (in weeks) to transition this Direct Deposit service from the incumbent bank to yours? The time should be measured from the date the contract is awarded to the date the service is fully operational.
2. Would the State incur any bank-generated costs associated with the transition? If so, please detail them.

### **Risk Management**

Provide the following information:

1. Organizational code of conduct and/or statement of ethics.
2. Regulatory Reports: Statement on Standards for Attestation Engagements No. 16, Reporting on Controls at a Service Organization (SSAE16), and your Securities Exchange Commission (SEC) Form 10-Q. Enumerate any issues raised about these documents during the bank's most recent audit.
3. Your organization's current short-term and long-term credit ratings.

*Note: The SSAE16 and SEC Form 10-Q should be referenced in your response, but the reports themselves may be provided outside the vendor's 3-ring binder proposal.*



## Attachment 2: Pro Forma Bid Sheet

CONTRACT NUMBER: TREAS-1603-DIRDEP

### Pro Forma Bid Sheet: Direct Deposit of Payroll

Banking Services	AFP Code	Annual Volume	Per Item Cost	Annual Cost
<b>Direct Deposit of Payroll</b>				
DDA monthly maintenance	01 00 00	12	\$ -	\$ -
822 file maintenance (both accounts)	30 01 99	24	\$ -	\$ -
ACH credits originated	25 01 02	1,200,000	\$ -	\$ -
ACH debit items (stop payment)	01 01 00	100	\$ -	\$ -
ACH return items	25 04 00	400	\$ -	\$ -
ACH return items report (daily via website)	25 03 02	250	\$ -	\$ -
ACH deletions (called in by PHRST)	25 06 20	150	\$ -	\$ -
ACH received items	25 02 02	150	\$ -	\$ -
ACH file transmission received	25 05 01	26	\$ -	\$ -
ACH inquiries online maintenance	25 01 02	12	\$ -	\$ -
Electronic credits posted (DD returns)	25 02 01	200	\$ -	\$ -
Notification of change	25 03 02	500	\$ -	\$ -
Wire transfers (incoming, sent by Treasury)	35 03 00	26	\$ -	\$ -
Extended data storage (120+ days) per access	40 08 00	1,000	\$ -	\$ -
Paper statement	01 03 10	12	\$ -	\$ -
Verification of data <sup>1</sup>		26	\$ -	\$ -
Event email messaging (per event)	40 02 ZZ	1,000	\$ -	\$ -
Previous day reporting (per item)	40 00 01	200	\$ -	\$ -
Online reporting module maintenance	40 00 00	12	\$ -	\$ -
<b>Subtotal of Direct Deposit of Payroll</b>				\$ -

*Note 1: Verification of Data is an email service provided by the incumbent, confirming that the data file has been received and that the totals are correct.*

# Pro Forma Bid Sheet: Direct Deposit of Pension

Banking Services		Annual Volume	Per Item Cost	Annual Cost
<b>Direct Deposit of Pension</b>				
DDA monthly maintenance	01 00 00	12	\$ -	\$ -
ACH credits originated	25 01 02	350,000	\$ -	\$ -
ACH debit items (stop payments)	01 01 00	50	\$ -	\$ -
ACH return items	25 04 00	120	\$ -	\$ -
ACH return items report (daily via website)	25 03 02	0	\$ -	\$ -
ACH deletions	25 06 20	0	\$ -	\$ -
ACH received items	25 02 02	50	\$ -	\$ -
ACH file transmission received	25 05 01	12	\$ -	\$ -
ACH inquiries online maintenance	25 01 02	12	\$ -	\$ -
Electronic credits posted (DD ACHs returned)	25 02 01	100	\$ -	\$ -
Notification of change	25 03 02	120	\$ -	\$ -
Wire transfers (incoming, sent by Treasury)	35 03 00	12	\$ -	\$ -
Extended data storage (120+ days) per access	40 08 00	500	\$ -	\$ -
Paper statement	01 03 10	12	\$ -	\$ -
Verification of data		12	\$ -	\$ -
Event email messaging (per event)	40 02 ZZ	500	\$ -	\$ -
Previous day reporting (per item)	40 00 01	200	\$ -	\$ -
Online reporting module maintenance	40 00 00	12	\$ -	\$ -
<b>Subtotal of Direct Deposit of Pension</b>				\$ -
<b>Subtotal of Ancillary Services</b>				\$ -
<b>Total annual fee</b>			\$	-

Vendor Name

Signature

Name of Authorizing Official

Date

## Pro Forma Bid Sheet: Ancillary Services

Banking Services	AFP Code	Annual Volume	Per Item Cost	Annual Cost
<b>Ancillary Services</b>				
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
<b>Subtotal of Ancillary Services</b>				\$ -

*This bid sheet intends to represent all required services. However, if the vendor feels that other banking services are required to provide a complete Direct Deposit function, those services may be listed here.*

Note 1:

Note 2:

Note 3:

Note 4:

Note 5:

Note 6:

Note 7:

Note 8:

### Attachment 3: Confidential or Proprietary Information Form

CONTRACT NUMBER: TREAS-1603-DIRDEP

- ☐ By checking this box, the vendor acknowledges that its proposal does not contain any information it declares to be confidential or proprietary for the purpose of production under 29 Delaware Code, Chapter 100, Delaware Freedom of Information Act.

Confidentiality or Proprietary Information

**Note:** Use additional pages as necessary.

## Attachment 4: Business References

CONTRACT NUMBER: TREAS-1603-DIRDEP

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State of Delaware employee as a business reference. If you have held a State of Delaware contract within the last 5 years, provide a separate list of the contract(s).

1.	<b>Contact Name &amp; Title:</b>	
	<b>Business Name:</b>	
	<b>Address:</b>	
	<b>Email:</b>	
	<b>Phone # / Fax #:</b>	
	<b>Current Vendor (YES or NO):</b>	
	<b>Years Associated &amp; Type of Work Performed:</b>	
2.	<b>Contact Name &amp; Title:</b>	
	<b>Business Name:</b>	
	<b>Address:</b>	
	<b>Email:</b>	
	<b>Phone # / Fax #:</b>	
	<b>Current Vendor (YES or NO):</b>	
	<b>Years Associated &amp; Type of Work Performed:</b>	
3.	<b>Contact Name &amp; Title:</b>	
	<b>Business Name:</b>	
	<b>Address:</b>	
	<b>Email:</b>	
	<b>Phone # / Fax #:</b>	
	<b>Current Vendor (YES or NO):</b>	
	<b>Years Associated &amp; Type of Work Performed:</b>	

## Attachment 5: Exception Form

CONTRACT NUMBER: TREAS-1603-DIRDEP

Proposals must include all exceptions to the specifications, terms or conditions contained in this solicitation. If the vendor is submitting the proposal without exceptions, please state so below.

- ☐ By checking this box, the vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in this solicitation.

[illegible]

**Note: Use additional pages as necessary.**

## Attachment 6: Non-collusion Statement

CONTRACT NUMBER: TREAS-1603-DIRDEP

This is to certify that the undersigned vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal submitted this date to the State of Delaware.

This is to further certify that the signed delivery of this bid represents the vendor's acceptance of the terms and conditions of this invitation to bid including all specifications and special provisions. This statement is signed by an official of the bank who is authorized to enter the bank into a legal agreement with the State of Delaware.

*Please type the following information.*

NAME OF BANK \_\_\_\_\_

ADDRESS OF BANK \_\_\_\_\_

AUTHORIZED OFFICIAL \_\_\_\_\_

TITLE OF OFFICIAL \_\_\_\_\_

SIGNATURE OF OFFICIAL \_\_\_\_\_

FEDERAL EMPLOYER IDENTIFICATION. NUMBER \_\_\_\_\_ DELAWARE BUSINESS LICENSE NUMBER \_\_\_\_\_

THIS PAGE MUST BE SIGNED AND NOTARIZED.

**Sworn and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2016.**

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_

Name of Notary Public \_\_\_\_\_ Signature \_\_\_\_\_

## **Attachment 7: Employing Delawareans Report**

CONTRACT NUMBER: TREAS-1603-DIRDEP

As required by House Bill # 410 (Bond Bill) of the 146<sup>th</sup> General Assembly and under Section 30, no bid for any public works or professional services contract shall be responsive unless the prospective vendor discloses its reasonable, good-faith determination of:

1. Number of employees reasonably anticipated to be employed on the project: \_\_\_\_\_
2. Number of such employees who are bona fide legal residents<sup>1</sup> of Delaware: \_\_\_\_\_
3. Percentage of such employees who are bona fide legal residents of Delaware: \_\_\_\_\_
4. Total number of employees of the vendor: \_\_\_\_\_
5. Total percentage of employees who are bona fide residents of Delaware: \_\_\_\_\_

*If subcontractors are to be used:*

1. Number of employees who are residents of Delaware: \_\_\_\_\_
2. Percentage of employees who are residents of Delaware: \_\_\_\_\_

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<sup>1</sup> "Bona fide legal resident" shall mean any resident who has established residence of at least 90 days in the State.



## **Appendix A: Scope of Services**

CONTRACT NUMBER: TREAS-1603-DIRDEP

### **I. General Specifications**

A. Vendor will perform the following general functions in administering the State of Delaware's Direct Deposit program:

1. Allow the State of Delaware to fund its Payroll Direct Deposit and Pension Direct Deposit accounts via wire transfer or ACH transfer on the effective date of the payday. With either method, Vendor will receive funding on or before the date of the payday.

a. In the event technical difficulties or natural disasters prevent the funding of the Direct Deposit account in a routine and timely manner, Vendor will fulfill all authorized requests to initiate Direct Deposit payments.

b. Vendor shall assume that its fulfillment of Direct Deposit transactions is supported by the full faith and credit of the State of Delaware.

2. Verify Control Totals, resolve all discrepancies and research items on transmitted files in less than 24 hours under normal operating circumstances. An appropriate State of Delaware official will provide verification control totals, and Vendor will submit an acknowledgement of the control totals. Vendor will promptly notify the appropriate State of Delaware official when this deadline cannot be met.

3. Process all Direct Deposit transactions for the State of Delaware to assure settlement of credits on the appropriate pay dates.

a. Should any transaction reject, Vendor shall assure the availability of funds to all Direct Deposit participants on or before 9:00 a.m. on the date of payment.

b. Vendor shall promptly report any ACH rejects to the appropriate State of Delaware official, and vendor will follow up the initial report with appropriate documentation (ACH Returns/NOC Detail Report).

(1) All payroll and pension ACH rejects must be returned via the ACH system to Vendor, at which point Vendor will coordinate with the participant's financial institution to determine the most satisfactory method of payment.

(2) Vendor shall make corrections to its files as soon as possible and notify the appropriate State of Delaware officials of those corrections.

(3) ACH Returns/NOC Detail Report must be provided on a daily basis online or via email, as directed by the agency. Email attachments must be in MS Word or Adobe Acrobat format. The following information must be included:

TR Number	Account Number
Dollar Amount	Company ID / Trace
Receiver Name	Receiver ID
Description / Error	Total Debits
Transaction Code	Effective Date
Status	NACHA Code
Corrected Information	Total Returns
Total Credits	Total NOCs

4. Establish a contingency plan for the State of Delaware's relationship so that in the event of an emergency the participants' accounts will be funded by alternate means (the "Contingency Plan").

*(Note: A Contingency Plan should be fully addressed in vendor's proposal. While this plan may be related to the vendor's Disaster Recovery Plan or Continuity of Operations Plan, the Contingency Plan is specific to the State of Delaware's Direct Deposit program and should be viewed as a distinct item.)*

5. Process all pre-note transactions for the State of Delaware using NACHA-approved standards.

6. Assume full responsibility for overdrafts, service charges and late charges that are the result of problems not directly caused by the State of Delaware. These problems may include daylight overdrafts, data transmission errors, data capture errors and computer malfunctions.

7. Identify key staff members who will be responsible for data transmission, communication and problem resolution for the State of Delaware, and promptly notify the State of any turnover in key positions.

8. Coordinate with the State of Delaware for all situations where a banking holiday or a State of Delaware holiday has the potential to cause a disruption to the timely transmission of Direct Deposit payments.

9. Edit, at the direction of the State of Delaware, a Direct Deposit file in order to delete funding amounts from particular records. This process allows the State of Delaware to exclude a specific participant's Direct Deposit payment on the day that control totals are submitted.

*Note: The State of Delaware, through its Direct Deposit enrollment form, possesses a limited power of attorney that allows the State of Delaware to rectify erroneous Direct Deposit payments.*

a. Requests for deletions may be done during the day after the submission of control totals.

b. Electronic submission is the preferred method, and a confirmation report from Vendor can be automatically retrieved after completion of the deletion process.

10. Initiate an ACH debit (stop payment) to remove all current or prior pay period Direct Deposit funds from the participant's bank account. This process allows the State of Delaware to access a participant's bank account to correct an incorrect payment.

a. Upon receiving instructions from an authorized official via telephone, email, online or fax, the Vendor will initiate an ACH debit which will remove funds from the participant's account and credit those funds to the State of Delaware's Direct Deposit account.

b. Vendor will provide written confirmation that funds for a requested ACH stop payment have been returned to the State of Delaware's Direct Deposit account.

11. Perform traces on participant accounts to determine the status of Direct Deposit activity.

12. Accept reimbursement from the State of Delaware for any deficit in the account(s) until the time the State notifies Vendor of the error adjustment. The State will then attempt to collect deficit funds from the participant. The State will not reimburse Vendor for any checks or other debits that occur after the notification. The State will not reimburse Vendor for any incorrect entries placed by Vendor.

13. Provide demand deposit account statements to OST within five business days after each pay date.

## **II. File Processing Specifications**

A. Vendor will perform the following functions regarding the State's data files:

1. Utilize Secure File Transfer Protocols ("SFTP") in any transfer of the State's data file. The State will place the data file on an SFTP server, located behind the DTI firewall.

2. Comply with all State data security standards as detailed in Attachment 8.

3. Retrieve the State's data file for each payday under **three** different scenarios.

a. Payday is defined as the period starting at 9:00 a.m. EST of any day targeted by the State for delivering the remuneration to active employees (payroll) and to retirees (pension). There are 26 or 27 payroll paydays, and there are 12 pension paydays.

*Note: The State's practice is to make the file available no later than 21 hours prior to the payday. Proposals should specify the vendor's deadline for having the file available. All files are in the ASCII format; file layout is provided in Appendix C.*

b. After successful file retrieval, Vendor may delete the data file. If not deleted, the State will overwrite the file on the next pay cycle.

### **Scenario 1: Routine**

Routine is defined as when the State is able to make available and the Vendor is able to retrieve the data file on the pre-determined schedule for each payday.

a. Each year, the State will provide Vendor with an annual payroll schedule and pension schedule.

b. The State will place the data file on an SFTP server no later than 21 hours prior to a scheduled payday. There is no communication during each pay cycle regarding file placement.

c. The Vendor will provide verification of successful file retrieval.

### **Scenario 2: Exceptions**

There are three types of exceptions:

- State's inability to meet file timing
- State's inability to place file on SFTP server
- Vendor's inability to pick up file from SFTP server

a. File timing. This exception occurs when the State cannot create the data file in time to meet the routine pre-determined schedule.

(1) The State will create the data file as soon as possible, and will place it on the SFTP server for retrieval.

(2) The State will notify Vendor as soon as possible when the timing must be changed from routine to exceptional.

b. File location. This exception occurs when the State is unable to place the file on the routine SFTP server.

(1) The State and Vendor will coordinate on a mutually-agreeable solution for the secure transfer of the data file.

(2) The normal file parameters will be used.

c. Vendor's inability to retrieve file. This occurs when Vendor is unable to retrieve the data file for any reason.

(1) The State and Vendor will coordinate on a mutually-agreeable solution for the secure transfer of the data file.

(2) The normal file parameters will be used.

### **Scenario 3: File unavailable**

This occurs when the State is unable to transmit the data file for any reason.

a. With authorization from the State – either PHRST or Pensions – the Vendor will use the previous pay cycle's data file to process the Direct Deposit ACHs.

b. The State will follow its established protocols for any adjustments that are required. There will be no special pay cycles; adjustments will be made on the following payday's data file.

## **III. Cash Management Specifications**

### **A. Collateralization of State Deposits.**

1. Collateralize all State deposits held in the demand deposit accounts used for the Direct Deposit program.

a. The Board requires that all cash management banks collateralize their State of Delaware non-investment, non-insured account balances.

*Note: Collateralization requirements are detailed in the Board's "Statement of Objectives and Guidelines for the Investment of State of Delaware Funds," which may be found on OST's website.*

b. The Vendor will sign a collateralization agreement with OST.

2. Provide the Designated Contact with a monthly rollup statement summarizing the activity in the Direct Deposit accounts.

a. The statement will be received by OST within 10 business days of the close of the month, and it will include:

- Activity information: Per item cost; Volumes; Total cost for each item; Overall gross cost; and Adjustments.

- Balance information: Average ledger; Average collected; Reserve requirements; Average available; Earnings allowance rate; Earnings allowance.
- Summary information: Total charge incurred; Total earning's credit; adjustments; Net amount due, expressed in both a fee basis and a compensating balance basis.

*Note: The minimum acceptable earnings allowance rate must be equal to or greater than the 91-day Treasury Bill rate as determined by the previous month's weekly auctions.*

*Note: If the Direct Deposit service is part of a larger State of Delaware banking relationship, the Direct Deposit account information must be included in the relationship summary.*

## **Appendix B: Professional Services Agreement**

CONTRACT NUMBER: TREAS-1603-DIRDEP

### **PROFESSIONAL SERVICES AGREEMENT** for DIRECT DEPOSIT BANKING SERVICES ISSUED BY THE CASH MANAGEMENT POLICY BOARD

This Professional Services Agreement ("Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date") and will end on \_\_\_\_\_, 20\_\_\_\_, by and between the State of Delaware, ("Delaware"), and \_\_\_\_\_, ("Vendor"), with offices at \_\_\_\_\_.

WHEREAS, Delaware desires to obtain those services set out in the Statement of Work on Exhibit 1 to this Agreement \_\_\_\_\_ on behalf of Delaware's Cash Management Policy Board ("Board");

WHEREAS, Vendor desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Vendor represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and Vendor agree as follows:

#### **1. Services and Term.**

- 1.1. Vendor shall perform for Delaware the services as specified on Exhibit 1 to this Agreement, attached hereto and made a part hereof, as well as such services or work as Delaware may request from time to time and for which the parties shall mutually agree (collectively, "Services").
- 1.2. If and when Delaware desires any addition or deletion to the Services or a change in the Services, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. To the extent set out herein, pricing of changes shall be consistent with those established within this Agreement. Any such changes in pricing shall be reflected in an amended and updated Exhibit 2 to this Agreement. No work for which additional compensation may be charged by Vendor shall be furnished, without the prior written authorization of Delaware.
- 1.3. The initial three-year term of this Agreement shall be from \_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_; provided that the initial term can be extended at Delaware's sole option for up to two additional one-year terms upon written notice to Vendor no later than 60 days prior to the expiration of the initial term or an optional term, as the case may be.

#### **2. Payment for Services and Expenses.**

- 2.1. Delaware will pay Vendor for the performance of Services in accordance with the payment schedule set out on Exhibit 2 attached hereto and made a part hereof.
- 2.2. Delaware's obligation to pay Vendor for the performance of Services will not exceed the fee amounts set out on Exhibit 2. It is expressly understood that the Services must be completed by Vendor and it shall be Vendor's responsibility to ensure sufficient competency and efficiency so that all Services are completed for the agreed upon fees.
- 2.3. Unless otherwise provided on Exhibit 2, all payments will be sent to the Vendor's identified address on record with Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- 2.4. Vendor shall submit quarterly invoices to Delaware in sufficient detail to identify the Services provided during the previous quarter. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event that Delaware disputes all or any portion of an invoice, Delaware agrees to provide Vendor with a detailed statement of Delaware's position on the invoice, or disputed portion of the invoice, within thirty (30) days of receipt.
- 2.5. Unless provided otherwise in Exhibit 1, all expenses incurred in the performance of the Services are to be paid by Vendor. If Exhibit 1 specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the Services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.6. Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.
- 2.7. Delaware shall have the right to set aside or subtract from any payment to be made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's provisions of Services hereunder.
- 2.8. Invoices shall be submitted to:

**Manager of Banking Services  
Office of the State Treasurer  
820 Silver Lake Blvd., Suite 100  
Dover DE 19904**

### **3. Time Schedule.**

- 3.1. A project schedule is set out on Exhibit 3, if applicable, attached hereto and made part hereof.
- 3.2. Any delay of Services or change in the sequence of Services, as applicable, must be approved in writing by Delaware.
- 3.3. In the event that Vendor fails to complete the Services or any portion thereof within the time specified in Exhibit 3, or with such additional time as may be granted in writing by Delaware, or fails to perform the Services, or any separable part thereof, with such



diligence as will insure its completion within the time specified in Exhibit 3 or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Exhibit 2.

#### **4. Responsibilities of Vendor.**

- 4.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the Services, Vendor shall follow practices consistent with generally accepted professional and technical standards and comply with all applicable federal, state and local laws, ordinances, codes and regulations.
- 4.2. Vendor shall be responsible for ensuring that all Services, additional work, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by Delaware's Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any Service, additional work product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.
  - 4.2.1 Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services furnished to Delaware. Vendor shall follow practices consistent with generally accepted professional and technical policies and standards. Vendor shall be responsible for ensuring that all Services, products, and deliverables furnished to Delaware are consistent with practices utilized by, or policies and standards promulgated by, DTI published at <http://dti.delaware.gov/information/standards-policies.shtml>. If any service, product or deliverable furnished by Vendor does not conform to DTI's policies, standards or general practices, Vendor shall at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI's policies, standards or practices.
  - 4.2.2 DTI is responsible for safeguarding the confidentiality and integrity of data in Delaware's computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process Delaware agency data shall not be modified without the prior knowledge and written authorization of DTI. All data generated from the original source data, shall be the property of Delaware. The control of the disclosure of those data shall be retained by Delaware and DTI.

Vendor is required to agree to the requirements in the Confidentiality (Non-Disclosure) and Integrity of Data Agreement ("Data Agreement"), which is attached as Exhibit 4 and made a part of this Agreement. Vendor employees, individually, may be required to sign the Data Agreement prior to beginning any work.

- 4.2.3 As computer, network, and information security are of paramount concern, Delaware wants to ensure that computer/network hardware and software do not compromise the security of its IT infrastructure. Therefore, Vendor, is guaranteeing that any system or software meets or exceeds the Top 20 Critical Security controls located at: <http://www.sans.org/critical-security-controls/>.
- 4.2.4 It shall be Vendor's duty to assure that all products of its effort do not cause, directly or indirectly, any unauthorized acquisition of data that compromises the security, confidentiality, or integrity of information maintained by Delaware. Vendor's agreement shall not limit or modify, liability for information security breaches, and Vendor shall indemnify and hold harmless Delaware, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) arising out of such breaches. In addition to all rights and remedies available to it in law or in equity, Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by such information security breaches that have not been previously paid to Vendor.
- 4.2.5 Multifunction peripherals must be hardened when used or connected to the network. They should be configured to harden the network protocols used, management services, processing services (print, copy, fax, and scan), logging, and physical security. Care shall be taken to ensure that any Delaware non-public data is removed from memory before service calls and/or equipment disposal.
- Electronic information storage devices (hard drives, tapes, diskettes, compact disks, USB, multifunction peripherals, etc.) shall be disposed of in a manner corresponding to the classification of the stored information, up to and including physical destruction.
- 4.2.6 Vendor shall be responsible for complying with the Terms and Conditions for Cloud Providers and External Hosting listed in Exhibit 5.
- 4.3. It shall be the duty of the Vendor to assure that all Services are technically sound and in conformance with all pertinent federal, state and local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work product.
- 4.4. Permitted or required approval by Delaware of any Services by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of such work. Delaware's review, approval, acceptance, or payment for any of Vendor's Services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.
- 4.5. Vendor shall appoint a senior employee who will manage the performance of Services and act as the single point of contact to the Board and Delaware. All of the Services shall be performed by such employee, or by Vendor's associates and employees under the direct personal supervision of such employee.

- 4.6. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work originally assigned to the diverted project staff at no cost to Delaware. Selected replacement staff are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause, Vendor shall remove such employee from the performance of Services and substitute in his/her place an employee suitable to Delaware.
- 4.7. Vendor shall furnish to Delaware's Designated Contact (as defined in Section 19 below) copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 4.8. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of Services and will be available for consultation with Delaware at such reasonable times with advance notice so as to not conflict with their other responsibilities.
- 4.9. Vendor has or will retain such employees as it may need to perform the Services. Such employees shall not be employed by Delaware or any political subdivision of Delaware.
- 4.10. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 4.11. Vendor and all subcontractors represent that they are properly licensed and authorized to transact business in Delaware as provided in 30 *Del. C.* §2502.
- 4.12. Vendor will provide financial statements to Delaware as requested, whether or not the vendor is a privately-held or publicly-held company.

## **5. Delaware Responsibilities.**

- 5.1. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of Services and will be available for consultation with Vendor at such reasonable times with advance notice so as to not conflict with their other responsibilities.
- 5.2. The Services performed by Vendor shall be subject to review for compliance with the terms of this Agreement by Delaware's Designated Contact.
- 5.3. The Designated Contact may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Vendor by written notice before the effective date of each such delegation. The review by Delaware's Designated Contact may be reported in writing to the Vendor but shall not relieve Vendor from the responsibility for the professional and technical accuracy of all Services delivered under this Agreement.

## **6. Work Product.**

- 6.1. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the Services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's Designated Contact upon completion or termination of this Agreement, whichever comes first. Delaware shall have the right to reproduce all documentation provided in connection with or otherwise supplied pursuant to this Agreement.
- 6.2. Vendor may retain title and interest to the data furnished and/or generated by Vendor pursuant to this Agreement but only to the extent that retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the Services. Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Vendor retains title, whether individually by Vendor or jointly with Delaware. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

## **7. Confidential Information.**

To the extent permissible under 29 *Del. C.* §10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

## **8. Warranty.**

- 8.1. Vendor warrants that the Services will be performed in a good and workmanlike manner. Vendor agrees to re-perform any Services or correct any other work product not in compliance with this warranty.
- 8.2. Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor for Delaware in connection with the provision of the Services, Vendor shall pass through or assign to Delaware the rights Vendor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), to the extent that such rights are assignable.

## **9. Indemnification; Discharge of Liability.**

- 9.1. Vendor shall indemnify and hold harmless Delaware, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) arising out of the negligent or other wrongful conduct of the Vendor, its agents or employees, or Vendor's breach of any material provision of this Agreement.
- 9.2. If Delaware notifies Vendor in writing of a third party claim against Delaware that any work product of Vendor developed, designed or delivered in connection with this Agreement infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware.

## **10. Insurance.**

10.1. Vendor shall maintain the following insurance during the term of this Agreement:

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law;
- b. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate;
- c. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate;
- d. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate; and
- e. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 for each person and \$300,000 for each accident as to bodily injury and \$25,000 as to property damage to others.

10.2. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered to Delaware in accordance with the policy provisions.

10.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies specified in Section 10.1 and its subsections, referencing the contract number stated herein, shall be filed with Delaware. The certificate holder is as follows:

**Manager of Banking Services  
Office of the State Treasurer  
820 Silver Lake Blvd., Suite 100  
Dover DE 19904**

10.4. In no event shall Delaware be named as an additional insured on any policy required under this Agreement.

## **11. Independent Contractor.**

11.1. It is understood that in the performance of the Services, Vendor shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such Services in its own manner and method except as required by this Agreement.

11.2. Vendor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Vendor in the performance of the Services; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

11.3. Vendor shall be solely responsible for, and shall indemnify, defend and hold Delaware harmless from all matters relating to the payment of its employees, including compliance with Social Security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

- 11.4. Vendor acknowledges that Vendor and any subcontractors, agents or employees employed by Vendor shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees' Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.
- 11.5. Vendor shall be responsible for providing liability insurance for its personnel.
- 11.6. As an independent contractor, Vendor has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, or fiduciary or agency relationship between the parties for any purpose.

## **12. Suspension.**

- 12.1. Delaware may suspend performance by Vendor under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Vendor at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Vendor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Vendor shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.
- 12.2. In the event Delaware suspends performance by Vendor for any cause other than the error or omission of the Vendor, for an aggregate period in excess of 30 days, Vendor shall be entitled to an equitable adjustment of the compensation payable to Vendor under this Agreement to reimburse Vendor for additional costs occasioned as a result of such suspension of performance by Delaware, contingent on appropriated funds and approval by Delaware.

## **13. Termination.**

- 13.1. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:
  - a. Not less than 20 calendar days written notice of intent to terminate; and
  - b. An opportunity for consultation with the terminating party prior to termination.
- 13.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:
  - a. Not less than 20 calendar days written notice of intent to terminate; and
  - b. An opportunity for consultation with Delaware prior to termination.
- 13.3. If termination for default is effected by Delaware, Delaware will pay Vendor that portion of compensation which has been earned as of the effective date of termination, but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed Services or other work, and
  - b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.
  - c. Upon termination for default, Delaware may take over the work and perform or cause to be performed the same to completion by agreement with another party or otherwise.
  - d. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 11.2.
- 13.4. If after termination for failure of Vendor to fulfill contractual obligations it is determined that Vendor has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.
- 13.5. The rights and remedies of Delaware and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
- 13.6. Gratuities.
- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
  - b. In the event this Agreement is terminated as provided in Section 13.6(a) hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
  - c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- 13.7. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of Delaware requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.
- 13.8. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall cease at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

#### **14. Assignment; Subcontracts.**

- 14.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void.
- 14.2. Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.
- 14.3. Approval by Delaware of Vendor's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.
- 14.4. Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.
- 14.5. The compensation otherwise due to Vendor pursuant to Exhibit 2 shall not be affected by Delaware's approval of the Vendor's request to subcontract.

#### **15. Complete Agreement.**

- 15.1. This Agreement and its Exhibits shall constitute the entire Agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.
- 15.2. If the scope of any provision of this Agreement is too broad in any respect to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
- 15.3. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.
- 15.4. Each Exhibit, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.



## **16. Miscellaneous Provisions.**

- 16.1. In performance of this Agreement, Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Vendor shall solely bear the costs of permits required and other relevant costs incurred in the performance of this Agreement.
- 16.2. Neither this Agreement nor any Exhibit may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
- 16.3. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 16.4. Vendor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Agreement. Vendor further covenants, to its knowledge and ability, that in the performance of said Services no person having any such interest shall be employed.
- 16.5. Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that its refusal to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, may result in Delaware declaring Vendor in breach of the Agreement, terminating the Agreement, and designating Vendor as non-responsible.
- 16.6. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this Agreement without liability or at its discretion deduct from the Agreement price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 16.7. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- 16.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Public Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor' performance and records pertaining to this Agreement at the Vendor's business office during normal business hours.
- 16.9. At the option of Delaware the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and

inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable may not be rendered inadmissible. If the matter is not resolved by negotiation or, alternatively, Delaware elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below.

- 16.10. Any disputes, claims or controversies arising out of or relating to this Agreement, and not resolved through resolution pursuant to Section 16.9, may be submitted to mediation by a mediator selected by Delaware for resolution. Delaware reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.
- 16.11. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law or at equity.
- 16.12. Pursuant to Regulation S-P adopted by the Security Exchange Commission, all non-public personal information provided by Delaware to Vendor under this Agreement shall be kept confidential by Vendor and not disclosed to others, except to the extent disclosure is (i) permitted by Regulation S-P or authorized by Delaware; (ii) required by applicable law or judicial or regulatory process; or (iii) necessary to carry out the purposes of this Agreement. All recommendations, advice, or other work product of Vendor developed under the terms of this Agreement and disclosed to Delaware, shall be treated as confidential by Delaware, except as permitted or required by applicable law or judicial or regulatory process to be disclosed.

## **17. Assignment of Antitrust Claims.**

As consideration for the award and execution of this Agreement by Delaware, Vendor hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the goods or Services and other work product purchased or acquired by Delaware pursuant to this Agreement.

## **18. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where federal law has precedence. Vendor consents to jurisdiction and venue in the State of Delaware.

## 19. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

### DELAWARE:

Office of the State Treasurer  
Attn: James DiDonato ("Designated Contact")  
820 Silver Lake Blvd., Suite 100  
Dover, DE 19904

### VENDOR:

(Vendor contact address)

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

### STATE OF DELAWARE: Office of the State Treasurer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### **VENDOR:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

The following five exhibits shall be considered part of this Agreement:

- Exhibit 1 – Statement of Work **[Incorporate Fully Negotiated Scope of Services]**
- Exhibit 2 – Payment Schedule **[Incorporate Fully Negotiated Fee Schedule]**
- Exhibit 3 – Project Schedule **[Incorporate Fully Negotiated Project Schedule – if applicable]**
- Exhibit 4 -- Confidentiality (Non-Disclosure) and Integrity of Data Agreement
- Exhibit 5 -- Cloud Computing & Offsite Hosting Standards

## **Exhibit 4: Confidentiality (Non-Disclosure) & Integrity of Data**

CONTRACT NUMBER: TREAS-1603-DIRDEP

### **CONFIDENTIALITY (NON-DISCLOSURE) AND INTEGRITY OF DATA AGREEMENT**

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

I/we, as an employee(s) of \_\_\_\_\_ or officer of my firm, when performing work for the Department of Technology and Information, understand that I/we act as an extension of DTI and therefore I/we are responsible for safeguarding the States' data and computer files as indicated above. I/we will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of DTI. Furthermore, I/we understand that I/we are to take all necessary precautions to prevent unauthorized use, disclosure, or modification of State computer files, and I/we should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure or modification of State data.

Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may mean the loss of my position and benefits, and prosecution under applicable State or Federal law.

This statement applies to the undersigned Contractor and to any others working under the Contractor's direction.

I, the Undersigned, hereby affirm that I have read DTI's Policy on Confidentiality (Non-Disclosure) and Integrity of Data and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by the terms above.

**Vendor Name:** \_\_\_\_\_

**Authorizing Official Name (print):** \_\_\_\_\_

**Authorizing Official Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Exhibit 5: Cloud Computing & Offsite Hosting Standards

CONTRACT NUMBER: TREAS-1603-DIRDEP

### NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE State of Delaware Cloud and/or Offsite Hosting Specific Terms and Conditions

	Terms and Conditions Clauses 1-13 are mandatory for every engagement. Exceptions will be considered non-compliant and non-responsive.
1	<b>Data Ownership:</b> The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The Service Provider shall not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware's written request.
2	<b>Data Protection:</b> Protection of personal privacy and sensitive data shall be an integral part of the business activities of the Service Provider to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. To this end, the Service Provider shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions:  a) All information obtained by the Service Provider under this contract shall become and remain property of the State of Delaware.  b) At no time shall any data or processes which either belongs to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the Service Provider or any party related to the Service Provider for subsequent use in any transaction that does not include the State of Delaware.
3	<b>Data Location:</b> The Service Provider shall not store or transfer non-public State of Delaware data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of Delaware data remotely only as required to provide technical support.
4	<b>Encryption:</b> a) The Service Provider shall encrypt all non-public <b>data in transit</b> regardless of the transit mechanism.  b) For engagements where the Service Provider stores sensitive personally identifiable or otherwise confidential information, this data shall be <b>encrypted at rest</b> . Examples are social security number, date of birth, driver's license number, financial data, federal/state tax information, and hashed passwords. The Service Provider's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology <a href="#">FIPS140-2</a> , Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, they must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach in accordance with the <a href="#">Cloud and Offsite Hosting Policy</a> . Additionally, where encryption of data at rest is not possible, vendor must describe existing security measures that provide a similar level of protection.

5	<b>Breach Notification and Recovery:</b> Delaware Code requires public breach notification when citizens' personally identifiable information is lost or stolen. Reference: <a href="#">6 Del. C. § 12B-102</a> . Additionally, unauthorized access or disclosure of non-public data is considered to be a breach. The Service Provider will provide notification without unreasonable delay and all communication shall be coordinated with the State of Delaware. When the Service Provider or their sub-contractors are liable for the loss, the Service Provider shall bear all costs associated with the investigation, response and recovery from the breach including but not limited to credit monitoring services with a term of at least 3 years, mailing costs, website, and toll free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves a Contractor from its own negligence or to the extent that it creates an obligation on the part of the State to hold a Contractor harmless.
6	<b>Notification of Legal Requests:</b> The Service Provider shall contact the State of Delaware upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. The Service Provider shall not respond to subpoenas, service of process, and other legal requests related to the State of Delaware without first notifying the State unless prohibited by law from providing such notice.
7	<p><b>Termination and Suspension of Service:</b> In the event of termination of the contract, the Service Provider shall implement an orderly return of State of Delaware data in CSV or XML or another mutually agreeable format. The Service Provider shall guarantee the subsequent secure disposal of State of Delaware data.</p> <p>a) <b>Suspension of services:</b> During any period of suspension or contract negotiation or disputes, the Service Provider shall not take any action to intentionally erase any State of Delaware data.</p> <p>b) <b>Termination of any services or agreement in entirety:</b> In the event of termination of any services or agreement in entirety, the Service Provider shall not take any action to intentionally erase any State of Delaware data for a period of 90 days after the effective date of the termination. After such 90 day period, the Service Provider shall have no obligation to maintain or provide any State of Delaware data and shall thereafter, unless legally prohibited, dispose of all State of Delaware data in its systems or otherwise in its possession or under its control as specified in section 7d) below. Within this 90 day timeframe, vendor will continue to secure and back up State of Delaware data covered under the contract.</p> <p>c) <b>Post-Termination Assistance:</b> The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</p> <p>d) <b>Secure Data Disposal:</b> When requested by the State of Delaware, the provider shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State of Delaware.</p>
8	<b>Background Checks:</b> The Service Provider shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for a minimum of 1 year is an authorized penalty. The Service Provider shall promote and maintain an awareness of the importance of securing the State's information among the Service Provider's employees and agents.
9	<b>Data Dictionary:</b> Prior to go-live, the Service Provider shall provide a data dictionary in accordance with the State of Delaware <a href="#">Data Modeling Standard</a> .
10	<b>Security Logs and Reports:</b> The Service Provider shall allow the State of Delaware access to system security logs that affect this engagement, its data and or processes. This includes the ability for the State of Delaware to request a report of the records that a specific user accessed over a specified period of time.

<b>11</b>	<b>Contract Audit:</b> The Service Provider shall allow the State of Delaware to audit conformance including contract terms, system security and data centers as appropriate. The State of Delaware may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least 30 days advance written notice and shall not unreasonably interfere with the Service Provider's business.
<b>12</b>	<b>Sub-contractor Disclosure:</b> The Service Provider shall identify all of its strategic business partners related to services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Service Provider, who will be involved in any application development and/or operations.
<b>13</b>	<b>Operational Metrics:</b> The Service Provider and the State of Delaware shall reach agreement on operational metrics and document said metrics in the Service Level Agreement. Examples include but are not limited to: <ul style="list-style-type: none"> <li>a) Advance notice and change control for major upgrades and system changes</li> <li>b) System availability/uptime guarantee/agreed-upon maintenance downtime</li> <li>c) Recovery Time Objective/Recovery Point Objective</li> <li>d) Security Vulnerability Scanning</li> </ul>

#### ACKNOWLEDGEMENT

**This signed document is hereby incorporated into Contract Number TREAS 16-03 DIRECTDEP, an Agreement between the State and the Vendor to provide Direct Deposit of Payroll and Pension. By signing this Attachment, the vendor agrees to abide by all of the above Terms and Conditions.**

**Vendor Name:** \_\_\_\_\_

**Authorizing Official Name (print):** \_\_\_\_\_

**Authorizing Official Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Appendix C: File Parameters

CONTRACT NUMBER: TREAS-1603-DIRDEP

### ***Header Record***

Field Value	Length	Field Value	Length
Record Type	1	Record Size	3
Priority Code	2	Blocking Factor	2
Transit Routing#	10	Format Code	1
Company ID	10	Original Bank	23
Transmit Date	6	Company Name	23
Transmit Time	4	Reference	8
File Modifier	1		

### ***Batch Header Record***

Field Value	Length	Field Value	Length
Record Type	1	Co Descr Date	6
Service Class Code	3	Eff Entry Date	6
Company Name	16	Settlement Data	3
Customer Description	20	Status Code	1
Company ID	10	Transit Routing#	8
Standard Entry Class	3	Batch#	7
Co Entry Descr	10		

### ***Detail Record***

Field Value	Length	Field Value	Length
Record Type	1	Employee ID	15
Transaction Code	2	Name	22
Transit#	8	Discr Data	2
Check Digit	1	Addenda Indicator	1
Account#	17	Trace#	15
Amount	10	Alternate Trace	15

### ***Batch Control Record***

Field Value	Length	Field Value	Length
Record Type	1	Batch Company ID	10
ServiceClassCode	3	Reserved1	19
BatchEntryCount	6	Reserved2	6
BatchEntryHash	10	TransitRouting#	8
TotBatchDebitAmt	12	Batch#	7
TotBatchCreditAmt	12		

### ***File Control Record***

Field Value	Length	Field Value	Length
RecordType	1	FileEntryHash	10
FileBatchCount	6	TotFileDebitAmt	12
FileBlockCount	6	TotFileCreditAmt	12
		Reserved	39